

## VOLUME 6

### CHAPTER 15 ADMINISTRATION

#### CHAPTER 6-1: INTRODUCTION AND OVERVIEW

[Chapter 15](#) of the Bankruptcy Code is intended to incorporate the Model Law on Cross-Border Insolvency prepared by the United Nations Commission on International Trade Law, and to provide an effective mechanism for dealing with insolvency proceedings in more than one country. [11 U.S.C. § 1501](#). Chapter 15 provides for the commencement of a bankruptcy case in this country that is ancillary to an insolvency proceeding pending in a foreign country. The primary objectives of chapter 15 include: (a) cooperation between United States courts, the United States Trustee, and United States debtors on the one hand, and the courts and other competent authorities of foreign countries on the other hand; (b) greater legal certainty for trade and investment; (c) fair and efficient administration of cross-border insolvencies; (d) preserving and maximizing the value of the foreign debtor's assets; and (e) facilitating the rescue of financially troubled businesses. *See In re Condor Ins., Ltd.*, 601 F.3d 319, 321-23 (5<sup>th</sup> Cir. 2010); *In re Betcorp, Ltd.*, 400 B.R. 266, 275-77 (Bankr. D. Nev. 2009).

Prior to the enactment of chapter 15, section 304 of the Bankruptcy Code governed the recognition of foreign insolvency proceedings in bankruptcy proceedings. Enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, chapter 15 supplanted section 304 of the Bankruptcy Code in its entirety. Through chapter 15, foreign representatives can avail themselves of the comity extended by United States bankruptcy courts to administer property located in this country as part of cross-border insolvency estates and proceedings. *See In re British American Ins. Co., Ltd.*, 425 B.R. 884, 898-99 (Bankr. S.D. Fla. 2010); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 696-700 (Bankr. S.D.N.Y. 2010).

#### 6-1.1

#### KEY TERMS

“Debtor” means an entity that is the subject of a foreign proceeding. *See* [11 U.S.C. § 1501\(1\)](#).

“Foreign representative” is defined as a “person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.” *See* [11 U.S.C. § 101\(24\)](#).

“Foreign proceeding” is defined as a “collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” See [11 U.S.C. § 101\(23\)](#).

“Foreign main proceeding” is defined as a “foreign proceeding pending in the country where the debtor has the center of its main interests.” See [11 U.S.C. § 1502\(4\)](#).

“Foreign nonmain proceeding” is defined as a “foreign proceeding other than a foreign main proceeding, pending in a country where the debtor has an establishment.” See [11 U.S.C. § 1502\(5\)](#).

“Recognition” means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter. See [11 U.S.C. § 1502\(7\)](#).

## 6-1.2

### **COMMENCEMENT OF A CHAPTER 15 PROCEEDING**

A chapter 15 case begins with the filing of a petition for recognition by a foreign representative. [11 U.S.C. §§ 1504, 1509, and 1515](#). [Section 1515](#) of the Bankruptcy Code specifies the forms of evidence that must accompany the petition for recognition. Federal Rules of Bankruptcy Procedure 1002 and 1003 govern the filing and the petition is prepared using [Official Form 1](#). The foreign representative designates on the petition whether it is a foreign main proceeding or foreign nonmain proceeding.

The bankruptcy court may, at the request of the foreign representative, grant provisional relief pending entry of an order granting the petition for recognition such as:

- (1) staying execution against the debtor’s assets located in this country;
- (2) allowing the foreign representative to administer assets located in this country;
- (3) providing for the examination of witnesses or the gathering of evidence regarding the debtor’s assets, affairs, rights, obligations, or liabilities; or
- (4) suspending or allowing the avoidance of certain transfers. See [11 U.S.C. § 1519](#). The provisional relief must be “urgently needed to protect the

debtor's assets or the interest of creditors.” See [11 U.S.C. § 1519\(a\)](#).

Chapter 15 embodies a mandatory recognition rule. The bankruptcy court must, after notice and a hearing and at the earliest possible time, enter an order recognizing the foreign proceeding if the foreign proceeding and the foreign representative meet chapter 15's definitional requirements and the filing requirements provided for in section 1515 are satisfied. See [11 U.S.C. § 1517\(a\)](#). Courts can refuse to recognize a foreign proceeding if recognition would be manifestly contrary to U.S. public policy. See [11 U.S.C. § 1506](#); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010).

### **6-1.3**      **RELIEF UPON RECOGNITION**

In a foreign main proceeding, once the bankruptcy court enters an order granting recognition, the automatic stay applies to property of the debtor located in the United States and the foreign representative may operate the debtor's business and exercise certain other powers of a trustee under the Bankruptcy Code. See [11 U.S.C. §1520](#).

In any foreign proceeding (either main or nonmain), the bankruptcy court may enter various types of discretionary relief consistent with the scope of rights, powers, duties, and responsibilities ordinarily extended to U.S. entities that seek bankruptcy relief. See [11 U.S.C. §§ 1507](#) and [1521](#).

### **6-1.4**      **VENUE**

Section 1410 of title 28 governs the venue of cases under chapter 15. A case under chapter 15 may be commenced in the district:

1. where the debtor has its principal place of business or principal assets in the United States;
2. if the debtor does not have a place of business or assets in the United States, where there is a pending action against the debtor in federal or state court; or
3. if neither of the above applies, where venue would be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.

### **6-1.5**      **NOTICE**

Section 1513 directs that foreign creditors possess the same rights regarding the commencement of, and participation in, a case as domestic creditors. Section

1514 specifies that foreign creditors should receive notice of the commencement of a case in the same manner as domestic creditors. Federal Rules of Bankruptcy Procedure 2002(p) and 2002(q) set forth procedures for notifying foreign creditors of the commencement of a chapter 15 case, the time period for filing proofs of claim, and, when appropriate, the bankruptcy court's intention to communicate with a foreign court or foreign representative.

#### **6-1.6      COOPERATION WITH FOREIGN COURTS**

Chapter 15 directs bankruptcy courts and parties to cooperate to the maximum extent possible with foreign courts and foreign representatives. To facilitate cooperation, bankruptcy courts may issue necessary orders; communicate directly with foreign courts and representatives; approve case management protocols; and appoint examiners, who will cooperate with the foreign representative in the administration of a foreign proceeding. See [11 U.S.C. §§ 1525-1527](#).

#### **6-1.7      COMMENCEMENT OF CONCURRENT CASE - REQUIREMENT OF U.S. ASSETS**

Chapter 15 provides that after a foreign proceeding is recognized a bankruptcy case concerning the same debtor may be commenced in this country only if the debtor has assets located here. See [11 U.S.C. §§ 1528-1530](#).

### **CHAPTER 6-2:    ROLE OF THE UNITED STATES TRUSTEE IN A CHAPTER 15 CASE**

The United States Trustee often has minimal active involvement in an ancillary case commenced under chapter 15. The United States Trustee should monitor the pleadings filed in any chapter 15 case. If a bankruptcy court order provides a role for the United States Trustee, or if the United States Trustee believes it is important to the integrity of the bankruptcy system to take a role in the case, the United States Trustee should consult further with the Office of the General Counsel.

Various sections of chapter 15 refer to the participation of an examiner in chapter 15 cases. Section 1522(d) provides that section 1104(d) will apply to the appointment of an examiner under chapter 15, and that the examiner must comply with the trustee qualification requirements of section 322. Because section 1104(d) requires that the United States Trustee appoint examiners, subject to court approval, the United States Trustee must appoint an examiner in a chapter 15 case if the court directs that one be appointed. Because such an appointment would be unusual, the United States Trustee should consult with the Office of the General

Counsel if the need to appoint a chapter 15 examiner arises.

Generally, in determining whether to respond to the commencement of a chapter 15 proceeding, the United States Trustee should be cognizant of the following:

- (1) scheduling of a hearing on the petition for recognition and any request for interim relief pending recognition;
- (2) the documents that must be filed and the tests that must be met in order to obtain recognition of the foreign insolvency proceeding;
- (3) the rights and responsibilities afforded to the foreign representative to operate the debtor's businesses and proceed with the administration, sale, or transfer of assets located in the United States;
- (4) chapter 15's directive to improve and ensure cooperation between United States and foreign courts in insolvency proceedings;
- (5) the use of insolvency protocols and agreements to coordinate the management of cross-border cases; and
- (6) the appointment of examiners to act at the direction of the court in both United States and foreign proceedings.